

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

WARNER MUSIC GROUP CORP., *et al.*

Plaintiffs,

V.

MEGAUPLOAD LIMITED, *et al.*,

Defendants.

No. 1:14cv374
(LO / IDD)

**MOTION OF DEFENDANT MEGAUPLOAD LTD.
FOR A STAY PENDING A PARALLEL CRIMINAL PROSECUTION**

Defendant Megaupload Limited (“Megaupload”) hereby moves for continuation of the stay of this action, and in support thereof, states as follows:

1. Plaintiffs filed this action on April 7, 2014, alleging claims for direct and secondary copyright infringement (Dkt. No. 1, *Complaint*). The Defendants in this civil action are Megaupload, Vestor Limited (“Vestor”), Kim Dotcom (“Dotcom”), Mathias Ortmann (“Ortmann”), and Bram van der Kolk (“van der Kolk”), all of whom are foreign nationals (*Id.*, *Complaint* ¶¶ 18 – 22).

2. Megaupload and the other Defendants in this civil action also have been indicted for racketeering, criminal copyright infringement, and other alleged crimes. *United States v. Kim Dotcom, et al.*, No. 1:12-cr-00003-LO (E.D. Va. filed Jan. 5, 2012) (“*Criminal Action*”). The *Criminal Action* is still pending.

3. In this civil action, Plaintiffs allege that they are victims of the putative criminal conspiracy alleged in the *Criminal Action* (Dkt. No. 1, *Complaint* ¶¶ 1 – 9), and Plaintiffs assert

claims for copyright infringement based on the same conduct and activities that are at issue in the *Criminal Action* (*Id.* ¶¶ 29 – 45).

5. On Megaupload's motion, the Court has stayed this case until August 1, 2014, on certain terms and conditions (Dkt. No. 27).

6. Defendants Megaupload, Dotcom, Vestor, and Ortmann also have been sued in two other civil actions now pending in this Court. *Microhits, Inc. v. Megaupload, Ltd.*, No. 1:12cv327-LO/IDD (E.D. Va. filed Mar. 21, 2012) ("*Microhits Action*"); *Twentieth Century Fox Film Corp. v. Megaupload, Ltd.*, No. 1:14cv362-LO/IDD (E.D. Va. filed Apr. 7, 2014) ("*Twentieth Century Action*"). Those related cases also have been stayed until August 1, 2014.

7. There are two pending court proceedings in New Zealand that Megaupload respectfully submits should be considered by the Court in connection with this motion to continue the stay. First, the Supreme Court of New Zealand granted an appeal to Dotcom, Ortmann, van der Kolk, and others, in their proceeding challenging the validity certain search warrants executed in New Zealand pursuant at the request of the United States in connection with the *Criminal Action*. That appeal is currently scheduled for oral argument in August 2014. Second, the extradition hearing for Dotcom, Ortmann, Van der Kolk, and others has been continued to February 2015.

8. In light of those proceedings, Megaupload hereby moves the Court to enter the attached proposed order, continuing the stay in this case until April 1, 2015 on the same terms and conditions.

9. Megaupload, however, does not waive any defense or procedural protections, including but not limited to defenses of insufficient service of process, lack of personal jurisdiction, and improper venue, nor does Megaupload waive the right to request additional time

to file and serve a response under Rule 12 if this motion is denied or when any stay entered in this action expires or is lifted.

10. Plaintiffs have been asked to consent to the continuation of the stay, but have not yet stated their position.

11. The grounds and reasons for granting this relief are stated in further particularity in the accompanying memorandum of law.

WHEREFORE, Defendant Megaupload Ltd. respectfully requests that the Court enter the attached proposed order staying this action until April 1, 2015.

Dated: July 18, 2014

Respectfully submitted,

/s/ Craig C. Reilly
Craig C. Reilly, Esq. (VSB # 20942)
111 Oronoco Street
Alexandria, Virginia 22314
TEL (703) 549-5354
FAX (703) 549-2604
craig.reilly@ccreillylaw.com

Ira P. Rothken (*pro hac vice* pending)
ROTHKEN LAW FIRM
3 Hamilton Landing
Suite 280
Novato, CA 94949
(415) 924-4250
(415) 924-2905 (fax)
ira@techfirm.net

Counsel for Defendant Megaupload, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2014, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users:

Thomas G. Hentoff
Eric C. Wiener
Gabriel A. Cohen
Nicholas G. Gamse
WILLIAMS & CONNOLLY LLP
725 12th Street, N.W.
Washington, DC 20005
Counsel for Plaintiffs

/s/ Craig C. Reilly
Craig C. Reilly, Esq. (VSB # 20942)
111 Oronoco Street
Alexandria, Virginia 22314
TEL (703) 549-5354
FAX (703) 549-2604
craig.reilly@ccreillylaw.com
Counsel for Defendant Megaupload, Ltd.